

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESUS EDUARDO MIZQUIN, *on behalf of
himself, FLSA Collective Plaintiffs, and the Class,*

Plaintiff,

-against-

PICCININI BROTHERS, INC., PAUL R.
VACCARI, and SYLVIE VACCARI,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/15/2023

1:23-cv-9101-MKV

ORDER

MARY KAY VYSKOCIL, United States District Judge:

The Court is in receipt of the parties' letters [ECF Nos. 23, 24]. Plaintiff's request to find Defendants in default is DENIED and the Clerk's Certificate of Default [ECF No. 20] as to all Defendants is hereby VACATED.

Defendants are simply not in default. Defendants have timely appeared and have actively sought to defend themselves in this action. [See ECF Nos. 6–10, 13, 21.] Moreover, “[t]he principle that upon a default all well-pleaded allegations must be accepted as true ‘has no bearing on an inquiry into whether the default judgment itself is void for lack of subject matter jurisdiction.’ ” *Greater New York Nursing Home Div. of 1199/SEIU Greater New York Ben. Fund v. Verrazano Staffing, Inc.*, No. 05-CV-4116, 007 WL 1480777, at *3 (E.D.N.Y. 2007), citing *Transatlantic Mar. Claims Agency Inc. v. Ace Shipping Corp., Div. of Ace Young Inc.*, 109 F.3d 105, 108 (2d Cir. 1997). Therefore, default is further improper because subject matter jurisdiction is contested in this case. [ECF Nos. 21, 22, 24.]

As such, IT IS HEREBY ORDERED that Plaintiff's letter [ECF No. 23] requesting that the Court deny Defendants' motion to dismiss [ECF No. 21] is DENIED. **Notwithstanding, Defendants are cautioned that any further failure to comply with the Court's deadlines**


and/or orders, the Local Rules, and the Court's Individual Rules of Civil Practice may result in sanctions, including monetary penalties on counsel, preclusion at trial of information not provided, or preclusion and/or dismissal of claims or defenses.

Any opposition to Defendants' motion to dismiss [ECF No. 21] that Plaintiff wishes to file is due on or before **January 5, 2024**. Further briefing will be on the schedule set forth in Local Rule 6.1(b). Any request for an extension or adjournment shall be made by letter filed on ECF and must be received at least 48 hours before the deadline.

The clerk of Court is respectfully requested to terminate docket entry number 24.

SO ORDERED.

Dated: New York, New York
December 15, 2023



MARY KAY MYSKOCIL
United States District Judge